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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/555,749	11/04/2005	Robert Albertus Brondijk	NL 030508	2122

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EXAMINER

CHOW, LIXI

ART UNIT	PAPER NUMBER
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2627

MAIL DATE	DELIVERY MODE
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01/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/555,749	BRONDIJK, ROBERT ALBERTUS	
	Examiner	Art Unit	
	Lixi Chow	2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-10 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Drawings

2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the blocks in Figs. 6 fail to illustrate the detail of the steps. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S.

Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 10 is drawn to a "program" *per se* or non-tangible signal with "program", *per se*, or non-tangible computer readable medium (as defined in the specification on page #, lines # as being a signal) with "program", *per se*, as recited in the preamble and as such is non-statutory subject matter. See MPEP § 2106.01. Data structures not claimed as embodied in tangible computer readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed tangible computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. Similarly, computer programs claimed as

computer listings *per se*, i.e., the descriptions or expressions of the programs are not physical “things.” They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Sasaki (EP 1282128 A1).

Regarding claim 1:

Sasaki discloses a device (see Fig. 1) for recording information on a record carrier of a re-writable type by writing marks in a track on a recording layer via a beam of radiation, the recording layer comprising a pre-track pattern indicating the position of the track (see Figs. 2A-2D; the recording layer includes a lead-in area, user data area and a lead-out area), the device comprising a head (see Fig. 1, element 2) for providing the beam, recording means (see Fig. 1, elements 7 and 8) for recording the information in the track according to a predefined recording format for constituting a recording area containing user data preceded by a lead-in zone located at the start of the recording layer, and formatting means (see Fig. 1, element 9) for formatting file record carrier, the formatting comprising writing data on the record carrier indicating that the

recording area does not contain user data, and providing on the record carrier status information indicating a size of a contiguously written area that extends from the beginning of the recording area in dependence on detecting a pre-existing contiguously written area that extends from the beginning of the recording area (see par. [0009] and [0029]-[0033]).

Regarding claim 2:

Sasaki discloses the device as claimed in claim 1, wherein the formatting means are arranged for said detecting by retrieving status information indicating a size of a contiguously written area that extends from the beginning of the recording area (see Figs. 2A-2D and par. [0032]-[0033]).

Regarding claim 3:

Sasaki discloses the device as claimed in claim 1, wherein the formatting means are arranged for said providing by maintaining status information indicating a size of a contiguously written area that extends from the beginning of the recording area in the event of a previously written record carrier (see Fig. 3, step S5).

Regarding claim 4:

Sasaki discloses the device as claimed in claim 1, wherein the formatting means are arranged for said providing by maintaining status information in the lead-in zone relating to de-icing and resetting a control parameter indicating the end of the user data (see Fig. 3, step S5, and Figs. 2A-2D).

Regarding claim 5:

Sasaki discloses the device as claimed in claim 1, wherein the formatting means are arranged for said detecting by detecting if the record carrier contains written data in the

recording area, and if not, setting the size of the pre-existing contiguously written area to zero (see par. [0029] and Fig. 3; the size of the pre-existing contiguously written area at the beginning is inherently set to zero).

Regarding claims 9 and 10:

Claims 9 and 10 is method of recording information and/or computer program product is operative to cause a processor to perform the method as claimed in claim 9. These claims recite similar limitations as in claim 1; hence, they are rejected under the same reasons set forth in claim 1.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki in view of Shishido et al. (US 2002/0136137; hereafter Shishido).

Regarding claim 7:

Sasaki discloses all the elements in claim 1; however, Sasaki fail to disclose writing dummy data in at least one predetermined address range used for storing file system data. On the other hand, Shishido discloses a device (see Fig. 4) comprising a formatting means (see Fig. 4, element 10) arranged for writing data on a record carrier indicating that the recording area does not contain user data by writing dummy data in at least one predetermined address range used for

storing file system data, in particular the dummy data being zero data (see Fig. 1, ST1, or Fig. 2, ST11; recording of null data corresponds to writing of dummy data being zero data).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the device of Sasaki to include the writing of dummy data in the address range for storing file system data as suggested by Shishido. One of ordinary skill in the art would have been motivated to do this because writing zero data in the area used for storing file system would indicate that no data have been written as fixed-length packet-write method.

Regarding claim 8:

Shishido discloses the device, wherein the formatting means are arranged for said writing dummy data in a first predetermined address range at the beginning of the recording area and/or a second predetermined range at the end of the recording area as the at least one predetermined range of addresses, in particular the first and second ranges being predetermined based on address ranges known to be used for file system data by a plurality of file system versions (see Fig. 1, ST3 or Fig. 2, ST13; please note that dummy data is written in the address range in ST1 or ST11).

Allowable Subject Matter

9. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the reference of record alone or in combination disclose or suggest the formatting means are arranged for recording a shortened lead-in starting at a shifted starting position beyond a predefined starting position and/or ending at position before a predefined

ending position, in particular the predefined recording format being DVD and the shifted starting position being 23.4 mm radial.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Suzuki et al. (US 2003/0218951) is cited, because Suzuki et al. show an optical disc device detects last position information of already recorded data and calculating data recordable capacity of a free space in accordance with the last position information.

Bakx et al. (US 2004/0196748) is cited, because Bakx et al. teach a device capable to proving information about the status of the recording area on an optical recording medium.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lixi Chow whose telephone number is 571-272-7571. The examiner can normally be reached on Mon-Fri, 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LC 1/03/08


THANG N. TRAN
PRIMARY EXAMINER